

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROBERT M. MULVEY,	:	
	:	NO. 1:05-CV-000037
Plaintiff,	:	
	:	OPINION & ORDER
	:	
v.	:	
	:	
	:	
FIRST USA BANK <u>et al.</u> ,	:	
	:	
Defendants.	:	

This matter is before the Court on the Motion for Expenses Against Defendant Banc One filed by Plaintiff (doc. 7). Bank One did not respond to Plaintiff's motion. Ultimately, Plaintiff requests this Court to impose upon Bank One the costs Plaintiff has incurred in effecting service following Bank One's refusal to execute a waiver of service (Id.). Plaintiff's reasons for urging this Court to grant his Motion follows.

On January 1, 2005, Plaintiff served a Complaint (doc. 1) and a waiver of service upon Banc One at the address supplied by Bank One on documents sent to Plaintiff (Id.). On January 24, 2005, Banc One signed the certified mail receipt (Id.). However, Banc One failed to respond to the waiver request (Id.). Consequently, Plaintiff hired a process server and served Banc One personally through its statutory agent in Cleveland, Ohio (Id.).

Citing Rule 4 of the Federal Rules of Civil Procedure, the Plaintiff notes that "if a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall

impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown" (doc. 7 quoting Fed. R. Civ. P. 4(d)(2)). Plaintiff contends that the award of costs can include the relevant fees associated with drafting the current Motion (doc. 7 citing BPNC, Inc. V. Estep, 2004 WL 1304938 (N.D. Ohio, May 10, 2004) (Carr, J.); Bozell Group, Inc. v. Carpet Co-op of America Ass'n, Inc., 2000 WL 1523282 (S.D.N.Y., Oct. 11, 2000)).

Plaintiff's analysis of the law as set forth in Rule 4 of the Federal Rules of Civil Procedure, as well as espoused in BPNC and Bozell, is correct. Plaintiff is entitled to an award of costs incurred in effecting service on Banc One, including the cost of preparing this motion unless Banc One demonstrates good cause. As noted above, Banc One did not respond to Plaintiff's Motion and, as such, has not provided the Court with the requisite showing of good cause. Plaintiff's counsel has attached an affidavit to the Motion indicating that \$181.00 has been incurred in attorney fees, paralegal time, and actual cost of service (doc. 7). Accordingly, the Court hereby GRANTS Plaintiff's Motion (doc. 7). Banc One is ORDERED to reimburse Plaintiff for these costs - specifically, \$181.00, payable immediately.

SO ORDERED.

Dated: June 30, 2005

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge